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Opinion No. 04-035

Authority Of Tennessee Department Of Transportation To Investigate Alleged Violations Of
Tennessee Water Quality Control Act

QUESTION

What powers do Tenn. Code Ann. §§ 4-3-2303(9) and 69-1-101 vest in the Commissioner of the Tennessee Department of Transportation to investigate alleged violations of the Tennessee Water Quality Control Act?

OPINION

None. The regulatory power to investigate allegations and initiate enforcement for violations of the Tennessee Water Quality Control Act, Tenn. Code Ann. §§ 69-3-101 to -137 (Supp. 2003), rests with the Commissioner of the Tennessee Department of Environment and Conservation.

ANALYSIS

Under Tenn. Code Ann. § 4-3-2303(9), the Commissioner of the Tennessee Department of Transportation (TDOT) has the power to “[u]ndertake programs of transportation related to investigation, research and operation of safe, adequate and efficient transportation modes, including but not limited to, aeronautics, waterways, rails, highways and mass transit.” Tennessee Code Annotated § 69-1-101 provides that “[a]ll navigable waters are public highways, including those declared navigable by special law.” The Tennessee Water Quality Control Act (TWQCA) establishes a regulatory program intended to “abate existing pollution of the waters of Tennessee, to reclaim polluted waters [and] to prevent the future pollution of waters” Tenn. Code Ann. § 69-3-102(b).

It is the opinion of this Office that the TDOT Commissioner’s authority in § 4-3-2303(9) to investigate safe, adequate and efficient modes of transportation does not give him the regulatory

power to investigate alleged violations of the TWQCA.* The regulatory power to investigate allegations and to enforce violations of the TWQCA is vested in the Commissioner of the Tennessee Department of Environment and Conservation (TDEC). *See* Tenn. Code Ann. § 69-3-107.

Likewise, the declaration in Tenn. Code Ann. § 69-1-101 that “[a]ll navigable waters are public highways, including those declared navigable by special law” does not provide the TDOT Commissioner with investigative authority under the TWQCA. Section 69-1-101 is not a provision of the TWQCA. This statute is one of several addressing navigable waters found in Chapter 1 of Title 69. The TWQCA is codified as Chapter 3 of Title 69. The TDOT Commissioner has not been given any regulatory power to investigate or enforce Tenn. Code Ann. §§ 69-1-101 to -117. Rather, the TDEC Commissioner is the state official who has been empowered to issue navigability permits and to investigate and initiate enforcement for a “violation of state navigability law.” Tenn. Code Ann. § 69-1-117(c).

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*TDOT’s highway construction projects that impact waters of the state are subject to the requirements of the TWQCA. While TDOT does not have the regulatory power to investigate and enforce under the TWQCA, as an entity subject to regulation, TDOT does have the responsibility to ensure that the agency itself and its highway contractors meet the TWQCA’s requirements.

Requested by:

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